

Minutes of the Zoning Board of Appeals Meeting of March 10, 2005

7:00 p.m.

MEMBERS PRESENT: **Regis Barrett, Chairman**
 Jeanne Hartman
 Bob Kinney
 Bob Kappler
 Joe Salem

ALSO PRESENT: **Tom Ockington, Building Commissioner**
 Diane Schiavone, Acting Secretary

Chairman – I would like to call the Zoning Board of Appeals Meeting to order. Roll call was taken and all members were present. **A motion to approve the Minutes from January 20, 2005 was made by Jeanne Hartman. Seconded – Bob Kinney. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kinney, Joe Salem, Bob Kappler.**

Item #1 – Appeal from Stella Buszko, 4760 Sunny Lane

Chairman, Regis Barrett stated anyone from the audience who wished to speak at this meeting is required to sign the attendance sheet so that the minutes of the meeting can be recorded accurately.

Stella Buszko was present along with her daughter Janice Kriausky to request a variance to install a six (6) foot tall shadowbox fence in the side and a three (3) foot tall decorative fence in the front yard to be located at 4760 Sunny Lane. Chairman Regis Barrett asked Stella Buszko to come forward to make her request. Mrs. Buszko and her daughter, Janice Kriausky produced pictures and a police report from the Brooklyn Police Department dated in 1992. Mrs. Kriausky began by stating past practices by Mr. Nunnari and his failure to adhere to City codes regarding a variety of issues. Mr. Barrett stated none of the issues stated by Mrs. Kriausky can be addressed by the Board of Zoning Appeals. Mrs. Kriausky stated the reason for the fence is to solve the problems that have existed between the two residents for years. She feels if the fence is erected as proposed, it would keep Mr. Nunnari from shoveling snow onto her mother's property. Joe Salem interjected Mrs. Kriausky is bringing up issues that cannot be addressed by this Board. Mrs. Kriausky then produced a list of five (5) addresses of homes in the area that currently have fences erected as Mrs. Buszko would like to install. Mrs. Buszko then referred to the police report from 1992 and Joe Salem then read it to all present.

Chairman, Regis Barrett then called forward Councilwoman, Rita Brown to speak. Mrs. Brown addressed the board and audience members by stating for the past years she has answered repeated phone calls from Mrs. Buszko asking for assistance regarding this matter. She strongly feels the fence will eliminate many of the current problems between these two neighbors and asks the Board to reconsider their decision.

Matthew Fitzsimmons, attorney for Frank Nunnari then asked to speak. Mr. Fitzsimmons stated he was present before the Board because of an appeal filed by Mrs. Buszko. Mr. Fitzsimmons

continued that to his knowledge, Mrs. Buszko has not returned to the Board since the last meeting held on January 20, 2005 to disclose any further activity between she and Mr. Nunnari. Mr. Fitzsimmons stated that if a six (6) foot fence were to be installed one (1) foot off of Mr. Nunnari's driveway, it would be very difficult for Mr. Nunnari or anyone who came to visit him, to enter and exit their cars doors without difficulty.

He feels the fence will not alleviate any problems regarding the placement of snow against Mrs. Buszko's house or windows. Mr. Fitzsimmons then asked the Board should uphold their previous decision and not grant the variance to Mrs. Buszko.

Jean Hartman then inquired as to the height of the proposed fence in the front yard then she feels if a fence is constructed in the side yard parallel to Mr. Nunnari's driveway, Mrs. Buszko will file complaints regarding snow being piled against her fence. Building Commissioner, Tom Ockington then asked to clarify that Mrs. Buszko's house is fifty-nine inches (59") from Mr. Nunnari's driveway and if Mrs. Buszko or a contractor were to request a permit to install a fence one (1) foot from the property line and the height of the fence was equal to the distance from the house a permit would have been issued. He continued by saying the issue is not whether a fence can be installed, it is the height of the proposed fence. Mr. Ockington also noted the zoning code issue previously brought up by Mrs. Fitzsimmons, of not having a fence unless the driveway is located two (2) feet from the property line as opposed to having a fence be erected one (1) foot from the property line needs to be reviewed by reading the whole paragraph. He noted it is either one OR the other.

Chairman, Regis Barrett referred to the drawing that was submitted by Mrs. Buszko stating the placement of the fence in the rear yard appears to be approximately two (2) feet from Mr. Nunnari's garage. Mr. Barrett stated if the overhang and the gutter were to be included in the measurements, it would be approximately seventeen (17) inches. Members made reference to the placement of a tree on the property but determined the tree in questions is located elsewhere on the property. Mr. Kinney noted the willingness of Mr. Nunnari to cut down a peach tree at the corner of the garage was mentioned at the previous meeting. Chairman, Regis Barrett noted at the previous meeting Mr. Nunnari stated he would be willing to cut down the peach tree to show a willingness to get along with his neighbor and also not shovel snow onto Mrs. Buszko's property. Mr. Barrett noted that upon his first inspection of Mrs. Buszko's property before the January 20, 2005 meeting, he had seen normal accumulation of ice and snow on Mrs. Buszko's bushes. Mr. Barrett continued that he has re-visited the properties since the last meeting during periods of snowfall to ensure Mr. Nunnari was not shoveling snow onto Mrs. Buszko's property and didn't see any ice or snow piled onto Mrs. Buszko's property or bushes. Mr. Barrett voiced his opposition to the construction of a fence by Mrs. Buszko in the side yard citing it appears to be a "spite" fence and would like to assist the two residents in coming to an agreement.

Janice Kriausky made an inquiry as to the proposed fence for the rear yard and Tom Ockington stated no variance is required to construct that fence. Audience member, Anna Mayfield asked to speak in defense of Mr. and Mrs. Nunnari and stated she has been a neighbor since 1992 and has never had any problems with them and subsequently requested the Board disallows a fence to be erected along the driveway.

Jeanne Hartman made reference to the list of fences provided by Mrs. Buszko and noted only a few were found. Chairman, Regis Barrett stated the fact other fences were constructed doesn't have any bearing on this request as we do not know when they were constructed or if variances were obtained.

Mr. Barrett asked the Board Members for any comments. Bob Kinney asked Service Director, Bob Kappler what the standard width of a parking space. Mr. Kappler responded it is ten (10) feet. Mr. Barrett then asked Mr. Nunnari if he would like speak on his own behalf. Mr. Nunnari came forward to state he has not intentionally piled snow onto Mrs. Buszko's property, referred to the width of his driveway and went further to say he will cooperate with whatever decision the Board makes. Mrs. Nunnari then came forward to speak and stated she and her husband have always been good neighbors, the accusations made by Mrs. Buszko are false and would like to get along with her.

Chairman, Regis Barrett inquired as to the proposed decorative fence in Mrs. Buszko's front yard asking if the fence is to begin at the front corner of her house. It was determined a three (3) foot decorative fence would be permitted from the front corner of Mrs. Buszko's house forward approximately six (6) feet towards the public walk.

A brief discussion was held by the Board. Bob Kappler asked Mrs. Buszko again if since the last meeting she has had trouble with Mr. Nunnari. Mrs. Buszko didn't answer the question; only stating that Mr. Nunnari hasn't been home. Bob Kinney asked Mrs. Buszko if she is aware of the plexi-glass bubble windows that have become available to homeowners. Mrs. Buszko was not familiar with them.

Bob Kinney then asked to make a proposal. He stated Mrs. Buszko doesn't need a variance for an approximate forty-two (42") inch fence, continuing that she can construct a six (6) foot fence from the back of her house to the rear of her property and then asked if we have any specific dimensions from Mr. Nunnari's garage to the proposed fence. Bob suggests to straighten out the fence line so that the fence in the rear yard be constructed as a six (6) foot fence (no variance is required); allow a forty-two (42) inch fence from the back of the house to the front of the house (no variance is required); and to grant a variance to install a three (3) foot decorative fence in the front yard to be two (2) feet off of Mr. Nunnari's driveway.

Joe Salem then stated this is the same proposal that was offered to the parties involved at the January 20, 2005 meeting but was found unacceptable by Mrs. Buszko. He continued to say that he approves of this proposal as long as both sides agree to it. Chairman, Regis Barrett confirmed the Board was denying the variance to install a six (6) foot tall fence in the side yard. Further discussion continued between the Board Members and the audience. Joe Salem then asked Mrs. Buszko if she is in agreement with regards to the height and placement of the decorative fence in the front yard to be located two (3) feet off of Mr. Nunnari's driveway. Mrs. Buszko agreed.

Joe Salem made a motion to deny the variance for the side yard and vote on the issues separately. Seconded – Bob Kinney. At this point, Janice Kriausky asked for the Board to amend the request from a forty-two (42) inch high fence to a forty-eight (48) inch high fence. A brief discussion by the Board Members noted that if the request were amended, a variance would be required and

Mrs. Buszko's order of fence materials would need to be customized and consequently become more costly to her.

Matthew Fitzsimmons, attorney for Mr. Nunnari expressed his confusion over the variance request for the fence in the side yard and its location off of Mr. Nunnari's driveway. Mr. Fitzsimmons stated if the proposed fence in the side yard is not placed two (2) feet off of the driveway, Mr. Nunnari is not in agreement. Members of the Board explained that Mrs. Buszko is legally permitted to install a forty-two (42) inch high fence in the side yard one foot off of Mr. Nunnari's driveway without obtaining a variance. Joe Salem then asked Mr. Fitzsimmons if his client was in agreement of locating the decorative fence in the front yard two (2) feet off of the driveway. Mr. Fitzsimmons stated they could agree to one portion, that it had to be a complete package. Mr. Fitzsimmons then requested a short break to speak with his client.

Upon their return, Mr. Fitzsimmons indicated the three (3) foot decorative fence located two (2) feet off of the driveway meets their approval but in the spirit of compromise, suggested the forty-two (42) inch high fence in the side yard be located one and one half (1 ½) feet off of Mr. Nunnari's driveway. Joe Salem then noted that locating the fence one and one half (1 ½) feet off of the driveway is not an issue for the Board to vote on, it is simply a question to be asked of Mrs. Buszko. Janice Kriausky replied the answer is no. Bob Kappler asked if Mr. Nunnari would agree to a taller fence if the fence itself was placed one and one half (1 ½) feet off of the driveway. Mr. Nunnari added the height of the fence doesn't matter, but he feels the taller the fence is, the more chance of foul play or vandalism may be involved. Joe Salem brought up the possibility of granting a variance for a forty-eight (48) inch high fence to be installed in the side yard a foot and a half (1 ½) feet off of the driveway. Mrs. Kriausky stated the fence will remain at forty-two (42) inches high and be located one (1) foot off of the driveway.

Matthew Fitzsimmons further questioned the decision to install a fence in the side yard located one (1) foot off of the driveway and stated if both parties are not in agreement, it will consequently cost all parties involved more time, effort and expense in the future as someone is sure to appeal this decision. Joe Salem confirmed that if Mrs. Buszko were to accept the proposal to install a forty-eight (48) inch tall fence located a foot and a half (1 ½) feet off of the driveway chances are there will be no further appeals. But if that is not an acceptable proposal, Mr. Nunnari and his attorney are threatening to appeal this decision and the installation of the fence will be delayed. Mrs. Buszko stated if no variance was required for a forty-two (42) inch high fence, she will remain with that decision, located one foot (1) off of the driveway.

Joe Salem officially withdrew his motion to deny the variances for the side yard.

A motion was made by Bob Kinney to grant the variance to install a three (3) foot tall decorative fence in the front yard, as amended, located two (2) feet off of Mr. Nunnari's driveway, for a maximum of twelve (12) feet from the front corner of the house. Seconded – Joe Salem. Vote Resulted – Regis Barrett, Jeanne Hartman, Bob Kinney, Joe Salem and Bob Kappler.

A motion to adjourn the meeting was made by Bob Kinney. Seconded – Regis Barrett. Vote Resulted – Yeas – Regis Barrett, Jeanne Hartman, Bob Kinney, Joe Salem and Bob Kappler.

Diane Schiavone, Acting Secretary

Regis Barrett, Chairman